



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 1, 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Interim Guidance On Maximizing Insurers' Contributions To Responses At Residences Contaminated With Methyl Parathion

FROM: Barry Breen, Director
Office of Site Remediation Enforcement

A handwritten signature in black ink, appearing to read "Barry Breen", followed by a horizontal line.

TO: Addressees

PURPOSE:

The purpose of this document is to provide guidance to EPA Regions on maximizing contributions from property owners' insurers, in the form of payments on policy claims and/or response work, to reduce EPA's costs for temporary relocation of homeowners and for decontamination and restoration of residences contaminated by methyl parathion.

This strategy is designed to primarily address owners of contaminated residences, so Regions will need to make appropriate adjustments when responding to owners of contaminated businesses and landlords and tenants in contaminated apartment buildings. (See August 1997 OSWER Directives entitled "Cleanup of Rental Residences Contaminated by Methyl Parathion" and "Cleanup of Methyl Parathion-Contaminated Businesses.")

BACKGROUND:

Since 1994 there has been an emerging pattern involving the illegal diversion of restricted-use pesticides from agricultural use to inappropriate use in homes and businesses. Methyl parathion was the pesticide used in the vast majority of these applications, which were made by both pest control businesses and homeowners. Starting in November 1994, in Lorain County, Ohio, the Superfund removal program has responded to many of these incidents of misapplication of methyl parathion.

The Agency has expended considerable resources responding to the widespread, improper application of methyl parathion in private residences and businesses. Thus far, over 1500 individuals have been temporarily relocated from their residences and estimated clean-up costs range as high as \$90 million. In order to reduce some of the Government's expenditures for responses to methyl parathion incidents, an EPA-DOJ Methyl Parathion Insurance Workgroup was convened in March of 1997 to devise a strategy for maximizing contributions from property owners' insurers. The workgroup developed the following 3-step strategy for the Regions as a method by which the Regions can maximize insurance contributions and reduce Agency expenditures. The three aspects of this strategy are: 1) **prompt notice** to the insurer of a potential claim; 2) **assignment** to EPA of the policy proceeds and/or property owner's rights under the insurance policy; and 3) **negotiation** with the insurers to expedite and maximize their contribution. Also, we have attached two sample documents which have been used by some Regions in pursuit of insurance contributions.

DISCUSSION:

STEP ONE: PROVIDE PROMPT WRITTEN AND/OR ORAL NOTICE TO INSURER

If it appears the Agency will incur costs addressing the contamination, Regions should initially determine whether or not the property is insured. If so, either the Region or the property owner should promptly initiate a two-step notification process. First, either the Region or the property owner should notify the insurer's agent of a potential claim by telephone. Second, either the Region or the property owner should send written notice of a potential claim to the insurer's agent. Preferably, the Regions should request that the property owner sign an EPA-drafted letter of notice, promptly secure the owner's signature, and mail the notice to the agent or the insurer. **See Attachment 1.**

STEP TWO: REQUEST THAT PROPERTY OWNER ASSIGN TO EPA INSURANCE PROCEEDS/ RIGHT TO PURSUE INSURANCE CLAIMS

The Region should request that the property owner sign an assignment form. Under this form, the owner should agree to: assign insurance proceeds to EPA to cover EPA's costs; assign to EPA the right to pursue claims under the insurance policy; sign the notice letter; and provide to EPA a copy of the insurance policy and related correspondence. **See Attachment 2.**

Regions should not condition response work on the owner's agreement to file a claim, assign policy rights to EPA, and/or reimburse EPA from insurance proceeds paid. Therefore, Regions should proceed to do relocation, decontamination and/or restoration work regardless of the owner's willingness to cooperate with EPA on insurance matters.

STEP THREE: NEGOTIATE WITH INSURERS TO EXPEDITE CONTRIBUTION

Regions, in conjunction with the Department of Justice, should contact the insurers to promote coverage and/or work under the applicable policies, and should request that the insurers promptly negotiate with the Region and/or policy holders.

This memorandum, and any internal office procedures adopted for its implementation, are intended solely as guidance for employees of the U.S. Environmental Protection Agency. This does not constitute a rulemaking and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this memorandum or its internal implementing procedures.

If you have any questions concerning this guidance, please call Jack Winder (EPA/OECA/OSRE) at 202-564-4292.

Attachments

Addressees:

Tim Fields, Acting Assistant Administrator for Solid Waste and Emergency Response
Lois Schiffer, Assistant Attorney General, DOJ
Steve Luftig, Director, Office of Emergency and Remedial Response
Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Directors, Hazardous Waste Management Division, Regions III, IX
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII
Assistant Regional Administrator, Office of Ecosystems Protection and
Remediation, Region VIII
Director, Environmental Cleanup Office, Region X
Regional Counsel, Regions I-X
Lisa Friedman, OGC
John Cruden, DOJ
Bruce Gelber, DOJ
ORC Superfund Branch Chiefs
Superfund Program Branch Chiefs

ATTACHMENT 1

Model Notification Letter

(address)

Attn: Claims Department

Dear Sir or Madam:

Re: Policy Number _____

This letter notifies you of a claim under my (homeowners) (renters) (CGL) insurance policy based on the presence of a hazardous substance, methyl parathion, at my property at _____ (address). The U. S. Environmental Protection Agency (EPA) has determined that the presence of methyl parathion at my property may pose an imminent and substantial endangerment to the public health, welfare or the environment.

EPA is carrying out an emergency removal action at my property. EPA's removal action involves the cleanup and restoration of my property, and the provision of temporary relocation assistance to residential occupants of my property. Accordingly, I have assigned my rights under the above-referenced policy to EPA to the extent of coverage available for cleanup and restoration of my property and for temporary relocation of the residential occupants of my property. Please direct copies of any correspondence concerning this claim to:

Chief, Cost Recovery Section
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Thank you.

Sincerely,

(name) (Insured)

ATTACHMENT 2

Model Assignment Form

ASSIGNMENT OF INSURANCE CLAIM

This Assignment of Insurance Claim ("Assignment") is made the ____ day of _____, 1997, by _____ ("Insured").

WHEREAS:

The U.S. Environmental Protection Agency (EPA) found that an imminent and substantial endangerment to the public health, welfare or the environment was posed by the presence of Methyl Parathion at Insured's property;

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA is providing for the cleanup and restoration of Insured's property, and for temporary relocation of the residential occupants of Insured's property;

Regulations that are relevant to the provision of relocation assistance during EPA's cleanup action (44 CFR § 220.4) provide that any insured applicant for relocation benefits shall agree to repay the cost of relocation assistance to the extent of any insurance proceeds available therefor; and

Insured has an insurance policy (the "Policy") with _____ insurance company (Policy Number: _____), including any declarations thereto, which may entitle Insured to coverage for the expenses of cleanup, restoration and/or relocation;

NOW, THEREFORE, in consideration of the cleanup, restoration, and temporary relocation of the residents of Insured's property, Insured assigns the Policy to EPA, under the following terms and conditions:

1. Insured assigns to EPA all rights Insured has under the Policy, including the right to make demand upon the Insurer and to pursue any remedies, legal and otherwise, under the Policy, to the extent of coverage available for cleanup and restoration of the Insured's property and for temporary relocation of the residential occupants of the Insured's property.
2. This assignment shall be limited to the amount spent by EPA for cleanup and restoration of Insured's property and for relocation assistance to residential occupants of Insured's property.
3. Insured authorizes the above-named insurance company, and its successors and assigns, to make payments due EPA under the Policy.

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4. Insured agrees to provide to EPA a copy of the Policy and copies of any other correspondence with that insurance company relating to claims arising from the presence of methyl parathion at Insured's property.

5. Insured agrees to cooperate with EPA in EPA's attempt to pursue any insurance claim assigned to EPA pursuant to this Assignment. This cooperation includes signing a letter to be provided by EPA for the purpose of notifying the insurance company of a claim under the Policy. This cooperation also includes signing any other documents necessary or useful to accomplish this Assignment or collect any benefits in connection with it.

Thus done, read and signed by the appearers in the presence of the undersigned competent witnesses, all of whom signed after a reading of the instrument on the date first above written.

WITNESSES:

A S S I G N O R

ENVIRONMENTAL PROTECTION AGENCY

BY: GREG E. FIFE

On-Scene Coordinator

ACKNOWLEDGMENT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, this day personally came and appeared _____, who first being by me duly sworn, did depose and say that he/she was one of the subscribing witnesses to the foregoing instrument; that the instrument was signed by _____ as his/her own free act and deed, for the uses and purposes therein set forth, in the presence of Appearer and the other subscribing witness.

In witness whereof the said Appearer has signed these presents before me in the presence of the undersigned competent witnesses on the _____ day of _____, 1997.

WITNESSES:

NOTARY

ACKNOWLEDGMENT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, this day personally came and appeared _____, who first being by me duly sworn, did depose and say that he/she was one of the subscribing witnesses to the foregoing instrument; that the instrument was signed by GREG E. FIFE, EPA On-Scene Coordinator, as his own free act and deed, for the uses and purposes therein set forth, in the presence of Appearer and the other subscribing witness.

In witness whereof the said Appearer has signed these presents before me in the presence of the undersigned competent witnesses on the _____ day of _____, 1997.

WITNESSES:

NOTARY